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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/070,971	07/23/2002	Hermann Winner	10191/2290	4849

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EXAMINER

SHRIVER II, JAMES A

ART UNIT

PAPER NUMBER

3618

DATE MAILED: 07/17/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Applicati n No.

10/070,971

Applicant(s)

WINNER ET AL.

Examiner

J. Allen Shriver

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 5-8 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 5-8 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 3/11/2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Preliminary Amendment

1. Applicant's submittal of a preliminary amendment was received on March 11, 2002, wherein claims 1-4 were cancelled and new claims 5-8 were added and a Substitute Specification was provided.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

3. **Claims 5-6 are rejected under 35 U.S.C. 102(e) as being anticipated by Janky et al. (US Patent 6,067,031).** Janky et al. discloses a device for controlling distance for a motor vehicle comprising a distance control device (13) for determining a setpoint time gap with respect to a vehicle driving ahead as a function of traveling speed and of a driver-specified minimum time gap; and at least one sensor for recognizing a poor visibility condition, the at least one sensor including at least one sensor for detecting a visual range in a vicinity of the vehicle using reflection measurement (See column 16, line 25+), wherein, in response to the poor visibility condition, the distance control device increases the setpoint time gap determined for normal visibility; wherein the at least one sensor further includes at least one sensor for detecting

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a road condition one of optically and by radar, the road condition including whether the road is wet or covered with snow (See column 15, line 25+).

In regards to claim 5, although Janky et al. does not specifically disclose time gaps between the vehicles, Janky et al. does disclose monitoring the velocities and distances between first and second vehicles to control a safe distance between the vehicles, therefore, Janky et al. does inherently disclose maintaining time gaps between the vehicles. By maintaining the velocities and distance between the first and second vehicles, Janky et al. is inherently controlling the time gap between the two vehicles.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. **Claims 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Janky et al. (US Patent 6,067,031).** Janky et al. discloses a device for controlling distance for a motor vehicle as set forth above, but does not specifically disclose wherein the distance control device increases the setpoint time gap during the poor visibility condition by 20-30% compared to normal visibility. Janky et al. does disclose adjusting the distances (vehicle-to-vehicle separation) when the vehicle is operated in inclement weather conditions, such as heavy fog (See column 8, line 60+). At the time of the invention, it would have been obvious to a person of ordinary skill in this art to adjust the time gap (distances between vehicles) during poor visibility

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by 20-30% compared to normal visibility in Janky et al. The motivation for doing so would have been to take into account the weather conditions in providing a safe distance to stop between the vehicles.

In regards to claim 7, Janky et al. does disclose wherein the at least one sensor further includes at least one sensor for detecting a brightness of the surroundings, but does not specifically disclose using at least one photodiode (See column 17, line 1+). The sensor disclosed in Janky et al. does determine the brightness of the surroundings by measuring the intensity of the reflected light beam (See column 16, line 51+). A photodiode is a photoelectric semiconductor device for detecting and measuring the intensity of radiant energy (as light). Therefore, even though Janky et al. does not specifically disclose using a photodiode, the sensor disclosed performs the same function of measuring the intensity of the reflected light to measure the brightness of the surroundings. Therefore, it would have been obvious to a person of ordinary skill in this art to use any type of sensor that detects the brightness of the surroundings.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Labuhn et al. (US Patent 5,454,442), Maskai (US Patent 4,987,357) and Kuragaki et al. (US Patent 6,311,121 B1) are relied on to show an adaptive cruise control. Janky et al. (US Patent 6,268,804 B1) is relied on to disclose a dynamic monitoring of vehicle separation. Pochmuller (US Patent 6,362,773 B1) is relied on to show a method for determining range of vision. Winner et al. (US Patent 6,580,385 B1) is relied on to show an object detection system for vehicles.

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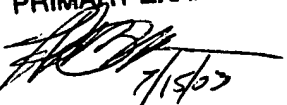
Any inquiry concerning this communication or earlier communications from the examiner should be directed to J. Allen Shriver whose telephone number is (703) 308-1224. The examiner can normally be reached on Mon-Thurs 7:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian L. Johnson can be reached on (703) 308-0885. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9326 for regular communications and (703) 872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

J. Allen Shriver
Examiner
Art Unit 3618

JAS
July 15, 2003

FRANK VANAMAN
PRIMARY EXAMINER

7/15/03